

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WELLS FARGO	§	
	§	
VS.	§	CIVIL ACTION NO.4:12-CV-886-Y
	§	
KEITH FOSTER and	§	
ANGELA FOSTER	§	

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

This case, removed from state court, now has pending motions for leave to proceed *in forma pauperis*. Resolution of the motions was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b) and Miscellaneous Order No. 6.¹ The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

In this case, Keith and Angela Foster have filed a Notice of Removal of a case filed against them by Wells Fargo Bank, NA in the County Court at Law Number One, Tarrant County, Texas.

B. PARTIES

Wells Fargo Bank NA was the plaintiff in state court, and the defendants/removing parties are Keith and Angela Foster.

C. LEGAL ANALYSIS

In response to a deficiency order each plaintiffs have now filed motions to proceed in forma pauperis under 28 U.S.C. § 1915 et. seq. The motions/applications includes the income and asset information for the Fosters. A review of the financial information

¹Order for the Adoption of Rules for the Exercise of Powers and Performances of duties by United States Magistrate Judges, signed May 5, 2005.

submitted in the applications/motions reflects that although Angela Foster is not employed, Keith Foster is employed and receives \$2,700.00 a month in income. The Fosters list no dependants. The information in these applications thus shows that the Foster's have sufficient monthly resources available to pay the filing fee. Thus, after review and consideration of the applications/motions to proceed in forma pauperis, the undersigned finds the motions to proceed IFP should be denied, and will make such a recommendation.

RECOMMENDATION

It is therefore RECOMMENDED that the December 12, 2012 motions/applications to proceed in forma pauperis [docket nos. 6 and 7] be DENIED by the district judge.

It is further RECOMMENDED that the district judge inform the removing parties that the complaint/notice of removal will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless Plaintiff pays to the clerk of Court the full filing fee of \$350.00 within ten (10) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 10 days after being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court is extending the deadline within which to file specific written

objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until January 3, 2013. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding and legal conclusion if it has been accepted by the United States District Judge. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that Plaintiffs are granted until January 3, 2013 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge, be and is hereby, returned to the docket of the United States District Judge.

SIGNED December 13, 2012.


JEFFEREY L. CURETON
UNITED STATES MAGISTRATE JUDGE